IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Rameshwar Lal (Rameshwar Dayal)
vs.
Vivek Sharma.

S.B.CIVIL SECOND APPEAL NO.145/2007 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 16.3.2007 PASSED BY DR.V.K. MATHUR, ADDITIONAL DISTRICT JUDGE NO.2, BHILWARA IN CIVIL APPEAL NO.30/2006.

DATE OF JUDGMENT ::: 9.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.Rajesh Panwar, for the appellant.

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BY THE COURT:

Heard learned counsel for the appellant.

The trial court granted decree for eviction from the suit premises against the defendant/ appellant/tenant vide judgment and decree dated

21.3.2006 on the ground that the plaintiff acquired a suitable residential accommodation and has changed the user of the house from residential to commercial. The said finding was upheld by the first appellate court vide judgment and decree dated 16.3.2007.

Learned counsel for the appellant/tenant tried to assail the finding of fact recorded by the two courts below but from the reasons given by the two courts below and in view of the fact that the appellant could not produce any independent witness, two courts below rightly reached to the conclusion that the appellant has changed the use of the premises without the consent of the landlord/plaintiff and further that the plaintiff has shifted to his another residential accommodation.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellant prayed that the appellant since is a sick person and he used his son's house only for temporary purpose and that too during his sickness, therefore, two years' time may be given to the appellant to vacate

the suit premises.

I considered this prayer of learned counsel for the appellant.

So far as the appellant's contention that he shifted only for a limited period and that too during his sickness is concerned, that cannot be accepted in view of the finding of two courts below but it may be true that the appellant may be sick and, therefore, he may need some time to vacate the suit premises.

In view of the above, taking a lenient view, this Court is of the view that the appellant be granted time upto 31.5.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the landlord by or before 31.5.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, and shall also pay the rent upto 31.5.2008 in advance within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.6.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

Since the order has been passed ex-parte granting time to the appellant, therefore, the respondent will be free to move application if he has any objection in grant of time to the appellant for vacating the suit premises.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya